

SEALED

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
v.)	CIVIL ACTION
)	NO. 07-12058-PBS
JOEL WETMORE,)	
)	
Respondent.)	

**MEMORANDUM OF DECISION AND ORDER ON
RESPONDENT’S MOTION TO EXCLUDE PRIVILEGED
INFORMATION AND TO PROHIBIT FURTHER
DISCLOSURE OF SUCH INFORMATION**

August 1, 2008

DEIN, U.S.M.J.

I. INTRODUCTION

The Respondent Joel Wetmore (“Respondent” or “Wetmore”) was sentenced to 87 months imprisonment for Receipt of Child Pornography, in violation of 18 U.S.C. § 2252(a)(2)(A), and Possession of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). While in the custody of the Bureau of Prisons (“BOP”), Wetmore participated in a voluntary Sex Offender Treatment Program (“SOTP” or the “Program”) located at the Federal Correction Institution in Butner, North Carolina. In connection with his participation in the SOTP, Wetmore signed a “Consent Form,” a copy of which is attached hereto as Exhibit A.

The Government commenced this action for a hearing to determine whether Wetmore is a “sexually dangerous person” subject to civil commitment for treatment in an appropriate facility under section 302 of the Adam Walsh Child Protection and Safety Act, 18 U.S.C. § 4248. In connection with this hearing, the Government is seeking to have its expert(s) review Wetmore’s mental health treatment records which were generated as part of the SOTP. This matter has been referred to this court for a ruling on Defendant’s Motion to Exclude Privileged Information and to Prohibit Further Disclosure of Such Information (Docket No. 59) by which Wetmore is seeking to prevent the use of these treatment records in connection with the civil commitment hearing on the primary grounds that they are protected by the psychotherapist-patient privilege.¹ The Government contends that Wetmore waived any privilege he may have by signing the Consent Form.

After careful consideration of the pleadings and arguments of counsel, this court concludes that the Consent Form did not constitute a general waiver of Wetmore’s psychotherapist-patient privilege in connection with these civil commitment proceedings. Therefore, the Respondent’s Motion is ALLOWED. Wetmore shall designate which specific documents he contends are covered by the privilege, and the Government shall have two weeks to respond. To the extent that there is a dispute concerning the

¹ While the motion is broadly worded, at oral argument it became apparent that the motion related to the experts’ review of Wetmore’s mental health treatment records as part of the experts’ analysis of whether Wetmore is subject to commitment under the Adam Walsh Act. This court’s decision is limited to the use of the records for that purpose.

confidentiality of any specific document, either party may file a motion to have this court determine whether the record is privileged.

II. STATEMENT OF FACTS

The facts are not in dispute. In July 2000, Wetmore pleaded guilty to one count of Receipt of Child Pornography and one count of Possession of Child Pornography. He was sentenced by the United States District Court for the District of Maine in October 2000 to 87 months imprisonment, followed by five years of supervised release.

Consent Form

In April 2005, Wetmore entered the FCI-Butner SOTP. He left the program in June 2005 for reasons that are unrelated to the instant motion. The SOTP is a voluntary program. As described in the Consent Form, which must be signed by all participants:

The Sex Offender Treatment Program is a therapeutic program which employs cognitive-behavioral and relapse prevention techniques to treat and manage sexual offenders. The primary goal of the SOTP is to help sexual offenders manage their sexual deviance in order to reduce sexual recidivism. The treatment program is designed to help those individuals who want to help themselves and are committed to permanent behavior change.

Consent Form at 1. The Program consists of four phases: pre-treatment and orientation; assessment; treatment; and release planning. *Id.* at 1-2. Of particular importance to the present motion, “Release Planning” is described as follows:

Release Planning: This is an essential component of the program which helps the sexual offender maintain therapeutic gains and *achieve a successful re-integration into the community upon his release*. Appropriate residential arrangements, recommendations for community-based treatment, and supervision guidelines are

developed in this phase of the program. *Detailed treatment summaries and relapse prevention plans are mailed to the inmate's probation officer, mental health professionals, and others if deemed appropriate.* Failure to participate in any component of the assessment, treatment, and release planning protocol may result in expulsion from the SOTP.

Id. at 2 (emphasis added).

The Consent Form contains language that expressly acknowledges that the Program requires the disclosure of personal information, including information about past sex offenses, and stresses the confidentiality of such information. Thus, the Consent Form provides:

Confidentiality

During your participation in the SOTP you will be expected to disclose personal information (e.g., sexual preferences and past offenses). As everyone in the program is expected to disclose personal information in their treatment groups, it is extremely important for you to protect the confidentiality and privacy of everyone in the program, present and past participants. Personal information about other inmates is not to be shared with anyone. Sharing information regarding your own treatment or personal issues with non-SOTP inmates is strongly discouraged. Violations of confidentiality may result in probation or immediate expulsion from the program, as well as institutional transfer.

Id. (emphasis added).

The Consent Form also informs the participants that their confidential information will be disclosed only in limited, specified circumstance. Moreover, it informs the participants that it is not in the interest of the Program to have participants reveal self-incriminating information which may lead to further prosecution. Specifically, the Form includes the following language:

Informed Consent and Statement Regarding Limited Confidentiality

I agree to voluntarily participate in the Sex-Offender Treatment Program. I agree to adhere to all conditions stipulated in this document. I also understand that treatment staff retain the right to modify the program requirements and conditions of treatment at any time.

I understand that this program does not offer a “cure” for my sexually deviant interest or behavior. I understand that the SOTP will teach me strategies and methods to manage and control my sexual deviance, and I understand that it is my responsibility to implement those techniques responsibly and effectively. I understand that I may withdraw from treatment at any time. *I understand that my confidentiality will be protected at all times, except in cases where there is a potential harm to myself or others, or when the security of the correctional institution is threatened. I also understand that the staff of the SOTP and Federal Bureau of Prisons, Department of Justice, and United States Probation Office may share information regarding my case.*

As mandated by law, mental health professionals are required to report any incident or suspicion of child abuse or neglect, past or present, to child protective and law enforcement agencies in the jurisdiction where the abuse occurred. Although admitting to unreported crimes may result in additional criminal prosecution, the SOTP strongly encourages all of its participants to be completely honest about the extent of their sexual deviance and sexual offense history. Providing self-incriminating information is not an interest of the Sex Offender Treatment Program and you will not be pressured to provide such information.

My signature below acknowledges my voluntary participation in the program *and my understanding of the mandatory child abuse reporting laws to which all mental health professionals are subject.*

Id. at 3 (emphasis added). Wetmore has submitted an affidavit, to which the Government has not objected, which describes statements made to him by treatment providers. He describes these statements as follows:

When I began the program it was explained to me that unless I “named names,” that is, gave names of specific people, I could not get into any trouble for what I was saying. The treatment providers stressed this. They told us that they had no interest in getting us into trouble, they only wanted to help us....

Wetmore Aff. at ¶ 2 (attached to Def. Motion (Docket No. 59) as Ex. B). As detailed below, this court finds these assurances consistent with the language of the Consent Form.

Civil Commitment Under the Adam Walsh Act

In July 2006, Congress enacted the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006). The Act, among other things, creates national child abuse and sex offender registries, increases federal criminal penalties for certain crimes against children, and provides grants to states to establish, enhance and operate civil commitment programs for sexually dangerous persons. A “sexually dangerous person” is defined as “a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others[.]” 18 U.S.C. § 4247(a)(5). A person who is “sexually dangerous to others” is one who “suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. § 4247(a)(6). Commitment under such programs is until such time as it is determined that the person “is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment[.]” 18 U.S.C. § 4248(e).

As part of the hearing to determine whether an individual is subject to commitment as a sexually dangerous person, the court may order the individual to be examined by a licensed or certified psychiatrist or psychologist. 18 U.S.C. § 4247(b). The individual may be committed to a suitable facility for such testing. Id. The psychiatric or psychological report generated is to include (1) the person's history and present symptoms; (2) a description of the psychiatric, psychological, and medical tests that were employed and their results; (3) the examiner's findings; and (4) the examiner's opinions as to diagnosis, prognosis and whether the person is a sexually dangerous person. 18 U.S.C. § 4247(c). The issue before this court is whether Wetmore's SOTP records can be provided to the examiner in connection with this testing.

III. ANALYSIS

Wetmore contends that the disclosure of his records without his consent and the use of these privileged records at his civil commitment hearing violates the federal psychotherapist-patient privilege; violates the Privacy Act of 1974 and the Health Insurance Portability and Accountability Act of 1996 (HIPPA), violates his Fourth Amendment rights, and violates his due process Fifth Amendment rights. These claims all hinge on whether Wetmore waived his claim of privilege by signing the Consent Form. As detailed herein, this court finds that Wetmore did not waive the psycho-

therapist-patient privilege by signing the Consent Form. Consequently, the Respondent's motion shall be allowed.²

The Privilege

The federal psychotherapist-patient privilege was first recognized by the United States Supreme Court in Jaffee v. Redmond, 518 U.S. 1, 9-10, 116 S. Ct. 1923, 1928, 135 L. Ed. 2d 337 (1996). "Like the spousal and attorney-client privilege," the Court held, "the psychotherapist-patient privilege is rooted in the imperative need for confidence and trust." Id. at 10, 116 S. Ct. at 1928 (internal punctuation and citation omitted). Thus, the Court found, "[e]ffective psychotherapy . . . depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears." Id. Since "the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment[.]" the Court rejected a balancing test applied by various courts, and refused to make the application of the privilege "contingent upon a trial judge's later evaluation of the relative importance of the patient's interest in privacy and the evidentiary need for disclosure[.]" Id. at 10, 17, 116 S. Ct. at 1928, 1932. Finally, the Court recognized that the privilege "serves the public interest by facilitating the provision of appropriate

² This court recognizes that another judge read the form differently, and held that the Consent Form allowed the broad dissemination of the records, which "effectively waived any right to confidentiality Respondent may have reasonably expected." See United States v. Carta, C.A. No. 07-12064 (Order dated May 19, 2008). This court respectfully disagrees, and finds that the cited language, when read in context, was not expansive but, rather, allowed for only the limited dissemination of certain information in specific circumstances.

treatment for individuals suffering the effects of a mental or emotional problem. The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance.” Id. at 11, 116 S. Ct. at 1929.

The burden is on the party asserting the privilege to establish that the privilege applies. In re Grand Jury Proceedings, 183 F.3d 71, 73 (1st Cir. 1999). “Hence, a party asserting the psychotherapist-patient privilege must show that the allegedly privileged communications were made (1) confidentially (2) between a licensed psychotherapist and her patient (3) in the course of diagnosis or treatment.” Id.³ The question whether specific communications in the instant case meet this criteria is left to a later date. The issue before this court is whether Wetmore waived the privilege by signing the Consent Form.

Waiver

The Supreme Court has recognized that, like in the case of other testimonial privileges, the patient may waive the psychotherapist-patient privilege. Jaffee, 518 U.S. at 15 n.14, 116 S. Ct. at 1931 n.14. “Waiver is the voluntary and intentional relinquishment of a known right.” United States v. Wimberly, 60 F.3d 281, 285 (7th Cir. 1995) (defendant’s admission to counselor that he molested the victim and another stepdaughter waived by acknowledgment that cases of known or suspected child abuse must be reported to local authorities, and by authorization forms releasing all counseling-related

³ The parties agree that the persons who counseled Wetmore had sufficient qualifications so that the privilege would apply unless waived.

records, reports and opinions to both the victim's mother and FBI). Both parties in the instant case apparently agree that given the "seriousness of the matter" at issue, the standard for waiver here is the equivalent of that required in taking a guilty plea — *i.e.*, that the defendant must make the waiver of his rights "knowingly, intelligently, and with sufficient awareness of the relevant circumstances and likely consequences." United States v. Ruiz, 536 U.S. 622, 629, 122 S. Ct. 2450, 2455, 153 L. Ed. 2d 586 (2002) (quoting Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970) (internal punctuation omitted)). "[T]he law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances – even though the defendant may not know the *specific detailed* consequences of invoking it." Id. at 629, 122 S. Ct. at 2455.⁴

A reading of the Consent Form establishes that in order to induce Wetmore to participate in the SOTP, the BOP agreed to keep the information revealed during the Program confidential except in very specific circumstances: *i.e.*, (1) in connection with the plan to re-integrate him into the community; (2) in the case of specific harm to the participant or others, or the security of the correctional institution; and (3) in the case of unreported crimes and incidents of child abuse and neglect which are subject to reporting

⁴ Since Wetmore only had to be advised of the general consequences of a waiver of the psychotherapist-patient privilege, this court rejects Wetmore's argument that he could not have waived the privilege for purposes of civil commitment under any circumstances since he signed the Consent Form prior to the enactment of the Adam Walsh Act.

laws. Consistent with these limitations, Wetmore was advised “not to name names” and not to provide other identifying information in connection with his treatment. Since the present proceedings do not fit into any of these limited circumstances, there has not been a waiver of Wetmore’s psychotherapist-patient privilege so as to allow the blanket use of his SOTP treatment records in connection with the civil commitment proceedings.

Analysis of Consent Form

The Consent Form has to be read as a whole. A fair reading of the document is that the participant was being assured that the overriding intent of the program was to help the participant and not to punish him. Thus, the Form expressly provided that “[t]he primary goal of the SOTP is to help sexual offenders manage their sexual deviance in order to reduce sexual recidivism.” Moreover, the participant was assured that “[p]roviding self-incriminating information is not an interest of the Sex Offender Treatment Program and you will not be pressured to provide such information.” The participant was advised that while he would be asked to disclose the extent of his “sexual deviance and sexual offense history,” such disclosure in the context of the Program was designed to further treatment, and not to result in further punishment.

Similarly, a reading of the Consent Form establishes that its overriding purpose was to advise the participant of the confidentiality of the Program, not to advise him of the unlimited potential use of his records. For example, there is a separate section entitled “Confidentiality” which emphasizes that it is “extremely important” that personal information be kept confidential. The participant was advised that while personal

information was going to be disclosed in treatment groups, it was not going to be shared. In fact, the disclosure of information about another participant may result in expulsion from the program and a transfer of institutions. This emphasis on confidentiality was continued even in the section addressing “Limited Confidentiality.” There the Form contains language that the participant’s “confidentiality will be protected at all times” except in the specified situations noted above (and discussed in detail below). In sum, the general purpose of the Consent Form was to encourage inmate involvement in the Program, and to encourage them to actively participate by revealing information which was to be kept confidential. The Form itself cannot be viewed as a general waiver of rights of confidentiality.

In signing the Consent Form, the participant did acknowledge that certain information may be revealed in limited circumstances and for limited purposes. In this court’s view, however, the use of the information in connection with a civil commitment proceeding runs counter to the confidentiality assurances given the participants. Thus, the government points to the language in the section entitled “Release Planning” which provides that “[d]etailed treatment summaries and relapse prevention plans are mailed to the inmate’s probation officer, mental health professionals, and others if deemed appropriate.” That paragraph, when read in its entirety, advises the participant that this information will be shared for purposes of helping the offender maintain therapeutic gains and “achieve a successful re-integration into the community upon his release.” There is nothing in this paragraph which indicates in any way that if the inmate is not being

released his treatment summaries will, nevertheless be disseminated and used against him.

The government also points to the language in the “Statement Regarding Limited Confidentiality” notifying the participant that “the staff of the SOTP and Federal Bureau of Prison, Department of Justice, and United States Probation Office may share information regarding my case” as evidencing a recognition that the participant was waiving the psychotherapist-patient privilege. However, this statement is preceded immediately by the sentence assuring the inmate that his “confidentiality will be protected at all times except in cases where there is a potential harm to myself or others, or when the security of the correctional institution is threatened.”⁵ Thus, even assuming,

⁵ The government does not, and cannot, argue that commitment as a sexually dangerous person qualifies under the Consent Form as a situation where there is “a potential harm to others” allowing for the dissemination of confidential information. Rather, it is undisputed that the Form’s reference is to a psychotherapist’s duty to take steps to protect third parties from a serious and immediate threat of harm by a patient. This duty was first recognized in Tarasoff v. Regents of the Univ. of Cal., 17 Cal.3d 425, 131 Cal. Rptr. 14, 551 P.2d 334 (1976) and has since been codified in most states. See United States v. Hayes, 227 F.3d 578, 583 (6th Cir. 2000). See also Jaffee, 518 U.S. at 18 n.19, 116 S. Ct. at 1932 n.19, where the Court noted in dicta, that “[a]lthough it would be premature to speculate about most future developments in the federal psychotherapist privilege, we do not doubt that there are situations in which the privilege must give way, for example, if a serious threat of harm to the patient or others can be averted only by means of a disclosure by the therapist.” Courts differ as to whether this duty goes beyond a duty to warn and constitutes an actual waiver of the therapist-patient privilege. See United States v. Chase, 340 F.3d 978, 985 (9th Cir. 2003). Even courts recognizing a waiver, however, limit it to allowing a psychotherapist to testify about a threat made by a patient that was “serious when it was uttered ... and its disclosure was the only means of averting harm ... when the disclosure was made.” United States v. Glass, 133 F.3d 1356, 1359-60 (10th Cir. 1998) (since psychotherapist did not tell Secret Service of threat to the president for ten days, court could not conclude that the statement was “a serious threat of a harm which could only be averted by disclosure” and declined to conclude that the privilege had been waived without further facts).

without deciding, that “information regarding my case” includes privileged treatment records, any sharing of information would have to be in the context of addressing an immediate security concern directed to an identifiable individual or place.

Finally, the government points to the fact that Wetmore was advised that “any incident or suspicion of child abuse or neglect, past or present,” had to be reported to “child protective and law enforcement agencies in the jurisdiction where the abuse occurred” and that he may be subject to additional criminal prosecution if he admitted to unreported crimes. In addition, by signing the Form, Wetmore acknowledged “the mandatory reporting laws to which all mental health professionals are subject.” If anything, this language highlights the fact that there could be negative consequences only in limited, identified circumstances and only if specific information was disclosed.

This intent to limit the waiver of confidentiality to very specific circumstances and situations is further highlighted by the fact that the Consent Form distinguishes between general information about “the extent of [the participant’s] sexual deviance and sexual offense history” which had to be disclosed during treatment, and other self-incriminating information that “was not an interest of the Sex Offender Treatment Program.” There would be no need to distinguish between the two types of information if all of it could be disclosed. In sum, this court concludes that the language of the Consent Form does not create a general waiver of the psychotherapist-patient privilege so that Wetmore’s SOTP records can be used in connection with the civil commitment hearing.

This court is very cognizant of the importance of the determination whether an individual is a sexually dangerous person, both to the individual and the community at large. It is also important that the examiners have as much relevant information as possible. Nevertheless, such concerns are not sufficient to negate the psychotherapist-patient privilege.⁶ Moreover, there is no evidence that enforcing the privilege would impair the process designed to establish whether an individual is a sexually dangerous person. In fact, the Massachusetts courts have recognized that enforcing the privilege is not inconsistent with the goals of civilly committing sexually dangerous persons.

In Commonwealth v. Lamb, 365 Mass. 265, 311 N.E.2d 47 (1974), the Massachusetts Supreme Judicial Court was called upon to determine whether the psychotherapist-patient privilege as set forth in Mass. Gen. Laws ch. 233, § 20B applied to persons being examined pursuant to court order as part of the process to determine if they should be civilly committed for an indefinite period as sexually dangerous persons under Mass. Gen. Laws ch. 123A. The court found that the statutory privilege applied, and that the psychotherapist-patient communication was privileged and inadmissible unless, as the statute provided, the patient had been informed that his examination was not privileged.⁷

⁶ As the Jaffee court found, “[m]aking the promise of confidentiality contingent upon a trial judge’s later evaluation of the relative importance of the patient’s interest in privacy and the evidentiary need for disclosure would eviscerate the effectiveness of the privilege.” Jaffee, 518 U.S. at 17, 116 S. Ct. at 1932.

⁷ Mass. Gen. Laws ch. 233, § 20B provided that the psychotherapist-patient privilege did not apply:

(b) If a judge finds that the patient, after having been informed that the

The requirement that such notice be given, the court held, “seems particularly suitable for cases such as this where the patient runs the risk of commitment as a sexually dangerous person depending on what he says in an interview which in the normal course of affairs would be accorded confidentiality.” Id. at 269, 311 N.E.2d at 50. Moreover, while declining to define all the procedures which constitutionally must be accorded to someone who is subject to a civil commitment proceeding, the SJC held that by “preserving a patient’s rights to keep privileged any communications made to a court-appointed psychotherapist in the case of a court-ordered examination, absent a showing that he was informed that the communication would not be privileged and thus, inferentially, that it would be used at the commitment hearing,” the court could avoid the “substantial” constitutional question whether the use of the statements without a warning infringes on a patient’s due process rights. Id. at 269-70, 311 N.E.2d at 50-51. Finally, the court concluded, that the requirement of notice before the information was used in the commitment proceedings struck an appropriate “balance between the need for fairness and disclosure to the patient and full information for the court[.]” Id. at 270, 311 N.E.2d at 51.

communications would not be privileged, has made communications to a psychotherapist in the course of a psychiatric examination ordered by the court, provided that such communications shall be admissible only on issues involving the patient’s mental or emotional condition but not as a confession or admission of guilt.

For present purposes, this is the equivalent of finding a waiver.

For similar reasons, this court finds that the enforcement of the psychotherapist-patient privilege in the instant case is not inconsistent with the Adam Walsh Act or the civil commitment process. Wetmore was informed that his treatment in the SOTP would be kept confidential except for limited circumstances which do not exist here. The privilege that he is being asked to forego is too significant to find a waiver without a clear expression of such a waiver. Other information will be available for review by the experts, and Wetmore will be available for an examination prior to the hearing. For all these reasons, this court finds that Wetmore has not waived his psychotherapist-patient privilege in connection with the SOTP.⁸

The Privacy Act and HIPPA

Wetmore's claim that release of his treatment records would violate the Privacy Act codified in 5 U.S.C. § 552a, and the Health Insurance Portability and Accountability Act of 1996, codified in pertinent part in 42 U.S.C. § 1320d and 1320d-6, is without merit. Both of these statutes allow for the production of these documents pursuant to a court order. See 5 U.S.C. § 552a(b)(11) ("No agency shall disclose any record which is contained in a system of records . . . unless disclosure of the record would be . . . (11) pursuant to the order of a court of competent jurisdiction"); 45 C.F.R. 164.512(e)(1)(I) ("A covered entity may disclose protected health information in the

⁸ In light of this holding, this court will not address Wetmore's constitutional arguments, or address the scope of constitutionally mandated procedural safeguards in civil commitment hearings.

course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order . . .”).

IV. CONCLUSION

For all the reasons detailed herein, Defendant’s Motion to Exclude Privileged Information and to Prohibit Further Disclosure of Such Information (Docket No. 59) is ALLOWED. Wetmore shall designate which specific documents he contends are covered by the privilege, and the Government shall have two weeks to respond. To the extent that there is a dispute concerning the confidentiality of any specific document, either party may file a motion to have this court determine whether the record is privileged.

/ s / Judith Gail Dein
Judith Gail Dein
United States Magistrate Judge



U.S. Department of Justice

Federal Bureau of Prisons

Federal Correctional Institution

PO Box 1000
Butner NC 27509-1000

Sex-Offender Treatment Program

Consent Form

(June 2001 revision)

Background

The Sex Offender Treatment Program is a therapeutic program which employs cognitive-behavioral and relapse prevention techniques to treat and manage sexual offenders. The primary goal of the SOTP is to help sexual offenders manage their sexual deviance in order to reduce sexual recidivism. The treatment program is designed to help those individuals who want to help themselves and are committed to permanent behavioral change. This program is task-based, not time-based. Progress will be measured in terms of completion of treatment goals and maintenance of therapeutic gains. Length of time in the program, by itself, does not constitute therapeutic progress or accomplishment.

The Treatment Program

The SOTP is currently housed in Maryland Unit at the Federal Correctional Institution in Butner, North Carolina. This Unit is designed to promote the development of a therapeutic community for inmates in the program. The Sex Offender Treatment Program is comprised of four components: 1) pre-treatment and orientation, 2) assessment, 3) treatment, and 4) release planning:

Pre-treatment and Orientation: This component of the program orients the program participant to all aspects of the program and introduces him to the concepts of therapeutic community. Inmates participate in a brief series of orientation sessions about the program, the benefits of treatment, the expectations of staff, and the standards of conduct for all program participants. In this phase, inmates attend and begin to participate in community meetings.

Assessment: This component of the program consists of a series of questionnaires, psychological test batteries, and phallometric tests. Polygraph testing may also be administered. Based on the results of the initial assessment, a comprehensive treatment plan is developed. During the first 60 days in the program, the inmate's appropriateness for treatment is carefully assessed. If the inmate is deemed inappropriate for treatment due to lack of motivation, rigid denial, or other impeding factors, he will be discharged from the program and removed from the Unit.

Treatment: This component of the program is comprised of milieu therapy, psychotherapy in various treatment modalities, and participation in structured psycho-educational programs and discussion groups pertaining to management of sexual deviance. Psychiatric treatment with medications may be considered on an individual basis to address symptom-related concerns. The essential goal of the program is to help the program participant become an honest, responsible, and law-abiding individual with effective self-control skills. In addition to individually-tailored goals, the primary goals in every inmate's treatment are:

1. Admission of guilt and/or remorse for the sexual crime(s) committed
2. Complete acceptance of responsibility for the sexual crime(s) committed
3. Identification and recognition of deviant sexual arousal and sexual offense pattern(s)

Client Initials: JK

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4. Control and management of deviant sexual arousal and behaviors
5. Improvement in affective modulation and self-regulation
6. Demonstration of genuine empathy for the offender's victim(s)
7. Improvement in social skills and overall interpersonal functioning
8. Acquisition of relapse prevention skills

Release Planning: This is an essential component of the program which helps the sexual offender maintain therapeutic gains and achieve a successful re-integration into the community upon his release. Appropriate residential arrangements, recommendations for community-based treatment, and supervision guidelines are developed in this phase of the program. Detailed treatment summaries and relapse prevention plans are mailed to the inmate's probation officer, mental health professionals, and others if deemed appropriate. Failure to participate in any component of the assessment, treatment, and release planning protocol may result in expulsion from the SOTP.

Standards of Conduct

Program participants are expected to adhere to a higher standard of conduct in order to continue their good standing within the program. This not only requires that program participants comply with all rules and regulations governing inmate conduct as defined by the Federal Bureau of Prisons, but also adhere to standards of conduct consistent with individuals who are committed to permanent abstinence from deviant sexual behavior. Violation of BOP policy regarding inmate conduct, SOTP Standards of Conduct as described in this document, or failure to progress in treatment may result in programmatic probation, incident reports, and/or immediate expulsion from the program. Adherence to BOP policy and the SOTP Standards of Conduct is an integral component of your treatment. Your behavior must always evidence strict observance of these policies and guidelines. Learning to live by rules and standards of conduct is critical to your success in treatment.

Confidentiality

During your participation in the SOTP you will be expected to disclose personal information (e.g., sexual preferences and past offenses). As everyone in the program is expected to disclose personal information in their treatment groups, it is extremely important for you to protect the confidentiality and privacy of everyone in the program, present and past participants. Personal information about other inmates is not to be shared with anyone. Sharing information regarding your own treatment or personal issues with non-SOTP inmates is strongly discouraged. Violations of confidentiality may result in probation or immediate expulsion from the program, as well as institutional transfer.

Dress Code

All SOTP participants must adhere to the Bureau of Prisons' Dress Code at all times. However, between the hours of 7:30 am and 4:00 pm during program days, the following are inappropriate: short pants, white or grey T-shirts, sweat pants, untucked shirts, soiled or unclean clothing, sunglasses, hats or any head gear, except for those worn for religious purposes, towels around neck, trouser leg turned up, radio headphones outside cells, or shower shoes. Exceptions will be made when participants are moving to and from recreation areas during off-program hours.

Inappropriate Materials

Program participants must comply with all policies governing inmate conduct as defined by the Federal Bureau of Prisons. In addition to contraband, the following materials are considered inappropriate for program participants to use, possess, or manufacture any type of pornographic or sexually explicit material such as photographs, drawings, and written materials; any photograph or "cut-out" from any publication of a nude or partially nude adult or child; any sexual apparatus or paraphernalia; any publication or photograph depicting physical abuse or sexual violence; any obvious collection of

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photographs, pictures or drawings depicting any individuals in sexually explicit or suggestive poses or situations; any material that depicts, describes or encourages activities which may lead to violence, sexual crimes, or exploitation; and any other material that is viewed by staff as incongruent with the goals of treatment.

General Rules

In addition to adhering to all rules outlined by the Maryland Unit Team, you are also expected to adhere to the following rules: 1) you must be fully dressed and well-groomed by 7:30 am on program days; 2) your bed must be made by 7:30 am. – on program days, you are expected to be out of bed after 7:30 am. – if not at your work site or approved institution program, you will be expected to be engaged in SOTP activities, cleaning your room, or contributing to the overall sanitation of the Maryland Unit; prison-issued and personal clothing should be clean and in good condition (e.g., no holes or stains); television will be off during program hours – television viewing is allowed as stipulated by the SOTP TV Guidelines posted in Maryland Unit; the playing of cards, billiards, or other games is prohibited during work or program hours; and telephone usage is not allowed during work or program hours.

Visitation Guidelines

All visits with individuals who have not attained the age of 18 will be screened by treatment staff for their appropriateness. Treatment staff may restrict your visitation with children if clinically indicated or if you are determined to pose a risk of harm to a child.


Informed Consent and Statement Regarding Limited Confidentiality

I agree to voluntarily participate in the Sex-Offender Treatment Program. I agree to adhere to all conditions stipulated in this document. I also understand that treatment staff retain the right to modify the program requirements and conditions of treatment at any time.

I understand that this program does not offer a "cure" for my sexually deviant interest or behavior. I understand that the SOTP will teach me strategies and methods to manage and control my sexual deviance, and I understand that it is my responsibility to implement those techniques responsibly and effectively. I understand that I may withdraw from treatment at any time. I understand that my confidentiality will be protected at all times, except in cases where there is potential harm to myself or others, or when the security of the correctional institution is threatened. I also understand that the staff of the SOTP and Federal Bureau of Prisons, Department of Justice, and United States Probation Office may share information regarding my case.

As mandated by law, mental health professionals are required to report any incident or suspicion of child abuse or neglect, past or present, to child protective and law enforcement agencies in the jurisdiction where the abuse occurred. Although admitting to unreported crimes may result in additional criminal prosecution, the SOTP strongly encourages all of its participants to be completely honest about the extent of their sexual deviance and sexual offense history. Providing self-incriminating information is not an interest of the Sex Offender Treatment Program and you will not be pressured to provide such information.

My signature below acknowledges my voluntary participation in the program and my understanding of the mandatory child abuse reporting laws to which all mental health professionals are subject.


Signature of Inmate
Joel Wetmore

10379-036
Register Number

4-14-05
Date